

AO 91 (Rev. 11/11) Criminal Complaint

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UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

United States of America
v.
Phillip R. Cape

Case:2:20-mj-30088
Judge: Unassigned,
Filed: 02-21-2020 At 11:30 AM
USA v. PHILLIP R. CAPE (CMP)(MLW)

CRIMINAL COMPLAINT

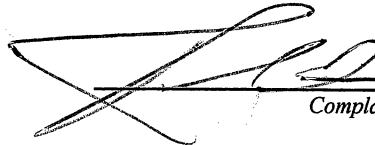
I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 22, 2018 - February 20, 2020 in the county of Oakland and elsewhere in the
Eastern District of Michigan, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 USC § 2252A(a)(1)(2)	Receipt of child pornography
18 USC § 2252A(a)(5)(b)	Possession of child pornography

This criminal complaint is based on these facts:
see attached affidavit.

☒ Continued on the attached sheet.



Complainant's signature

Raymond C. Nichols, Special Agent (FBI)
Printed name and title

Sworn to before me and signed in my presence.

Date: February 21, 2020

City and state: Detroit, Michigan



Judge's signature

Hon. Anthony P. Patti, United States Magistrate Judge
Printed name and title

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMPLAINT
AND ARREST WARRANT**

I Raymond C. Nichols, having been first duly sworn, do hereby depose and state as follows:

I. INTRODUCTION

1. I have been employed as a Special Agent of the FBI since February of 2012. I am currently assigned to the FBI Detroit Division. As a Special Agent, I investigate federal criminal violations related to Internet fraud, computer intrusions, and the FBI's Innocent Images National Initiative, which investigates matters involving the online sexual exploitation of children. I am currently assigned to the Southeast Michigan Trafficking and Exploitation Crimes Task Force (SEMTEC). I have gained experience through training at the FBI Academy, post Academy training, and everyday work related to conducting these types of investigations. Before joining the FBI, I obtained a bachelor's degree in computer information systems and employed as a network/server administrator for approximately nine years.

2. This affidavit is made in support of an application for a criminal complaint and arrest warrant for **PHILLIP R. CAPE** (date of birth **/**/1980) for violating 18 U.S.C. §§ 2252A(a)(1)(2) and 2252A(a)(5)(b) receipt and possession of child pornography.

3. The statements contained in this affidavit are based in part on written

reports from other law enforcement agents, independent investigation and analysis by law enforcement officers/analysts, and my experience, training and background as a Special Agent (SA) with the FBI. Because this affidavit is being submitted for the limited purpose of securing an arrest warrant, I have not included each and every fact known to law enforcement concerning this investigation. The facts set forth establish probable cause that **CAPE** has violated Title 18 U.S.C. §§ 2252A(a)(1)(2) and 2252A(a)(5)(b).

II. PROBABLE CAUSE

4. On or about September 22, 2018 an FBI online covert employee (OCE) posted a message on the mobile social media application Whisper which included a photograph of a young female child blowing bubbles. Whisper is an internet-based application. The message stated, “@active/M_38_icezt_seeking similar.” Within minutes the OCE received a message from Whisper username the_wow which stated, “Dont have an active incest relationship but I think it’s really hot. Will you tell me about yours?” The OCE indicated that he was active with his 11 year old daughter. The word active was used to indicate that the OCE was in a sexual relationship with his own 11 year old daughter.

5. On September 22, 2018, the OCE provided his KIK username to Whisper user the_wow and told him that they could continue the conversation on KIK. KIK is also a mobile phone application that allows user to send text and

multimedia messages using the internet. The_wow sent the OCE a message which stated, "Messaged you there."

6. On September 22, 2018, immediately after the_wow indicated he had sent the OCE a message on KIK, the OCE received a message from KIK user CApep824. CApep824 indicated that he used and could access methamphetamine and the OCE asked him when he could share. CApep824, in response, stated, "When you sharing lol." Based on my training and experience, that statement from CApep824 indicated that he was inquiring about engaging in sexual activity with the OCE's 11 year old daughter.

7. From September 22, 2018 through October 5, 2018 the OCE and CApep824 discussed meeting up for sex with the OCE's 11 year old daughter. CApep824 indicated that he could provide methamphetamine to the OCE and his daughter. At one point CApep824 sent a video which he purported to be himself smoking a substance using a glass pipe. Based on my training and experience the video appeared to depict him smoking methamphetamine. For a reason unknown to the OCE at the time, CApep824 stopped conversing with the OCE.

8. An FBI analyst began working to identify CApep824 using subpoenas, law enforcement databases, open source and social media. The FBI was able to identify CApep824 as PHILLIP R. CAPE, date of birth **/**/1980, home address 5*** Langlewood Drive, West Bloomfield, Michigan. A Michigan

driver's license photograph was obtained which matched the person in the video sent from CApep824.

9. A criminal history was obtained for CAPE which indicated multiple arrests for dangerous drugs out of Colorado. Additionally, CAPE is on parole for drug charges out of Colorado. CAPE is supervised by a parole agent in Michigan.

10. Based on the information available to the FBI at this time, it appears that CAPE stopped talking to the OCE because he was incarcerated in Colorado.

11. On December 23, 2019 the OCE received a KIK message from CApep824 which stated, "Hey, you still around?" and "idk if u remember me from like a year ago." The OCE did not respond to the message until February 10, 2020 and stated, "I remember u..." CApep824 told the OCE that he was getting high, and asked, "Things still going with ya daughter?" CApep824 then sent a video that was purported to be him smoking a substance using a glass pipe consistent with the use of methamphetamine. The OCE told CApep824 that he was still active with his daughter and CApep824 asked the OCE "U still want to get her high and share?" The OCE indicated that he was still interested and CApep824 asked how old she was. The OCE told CApep824 that she was 12 years old. The OCE and CApep824 continued to discuss meeting up and "ground rules."

12. A portion of that conversation follows:

DATE	USER	MESSAGE
2/13/2020	CApep824	Well what are your limits
2/13/2020	OCE	You have to use a condom for everything except maybe oral sex. If she cries it has to stop. Nothing that will leave any marks.
2/13/2020	CApep824	Absolutely. Cryings a no go
2/13/2020	OCE	100%
2/13/2020	CApep824	I want her to want it
2/13/2020	CApep824	A horny 12 year old slut is so hot

13. On February 20, CApep824 and the OCE agreed to meet at Bob Evans in Romulus, Michigan. The OCE asked CApep824 if he had "...party supplies." CApep824 indicated that he did. Party supplies in this instance was a reference to methamphetamine which was to be provided to the OCE and his 12 year old daughter.

14. On February 20, 2020 in anticipation of CApep824's arrival, SEMTEC setup surveillance in the vicinity of the Bob Evans. At approximately 8 PM surveillance observed a black in color Mazda 3 known to be registered to CAPE pull into the lot and park. Members of SEMTEC made contact with the driver of the Mazda 3 who was identified as CAPE.

15. CAPE admitted to using KIK account CApep824 and stated that he

was the only person to do so. CAPE used KIK on his password protected Samsung cellular telephone. CAPE indicated that he had driven from Pontiac, Michigan to the Bob Evans to meet a man and his daughter, but that it was just to see if they were real. CAPE indicated that he had multiple conversations like those detailed in this affidavit. He also stated that he had met up with a 16-year old girl in Taylor and had her perform oral sex on him and that sexual pictures of her would be found on his cellular phone.

16. CAPE also indicated that he was a member of some online groups that shared child pornography files. CAPE told me that there would be approximately 10-12 child pornography files on his phone. CAPE provided the password (swipe code) to his phone and written consent to search it. CAPE denied that there were any drugs in his car.

17. From inside the Mazda 3 driven by CAPE, the FBI recovered a sizeable amount of suspected methamphetamine and a glass pipe which appeared similar to the one depicted in the videos sent to the OCE. When confronted with this information CAPE apologized to the Agents for lying about the drugs and admitted that they were indeed methamphetamine.

18. On February 21, 2020, a preliminary review of CAPE's Samsung phone was conducted at the FBI offices in Detroit, Michigan. There were multiple files on the phone which meet the federal definition of child pornography. Three

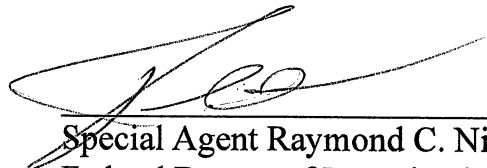
of those files are described below:

- a. Image 1 – This image appears to depict a prepubescent female child with a penis in her mouth. The image is tightly focused on the face of the child.
- b. Image 2 – This image appears to depict a prepubescent female child. The child is completely nude, and seated with her legs spread to expose her vaginal area. On her chest is a liquid substance believed to be male ejaculate.
- c. Image 3 – This image appears to depict a completely nude prepubescent female child. The child is sitting on the face of what appears to be an adult female wearing lingerie. The child's legs are spread to expose her vaginal area.

III. CONCLUSION

19. Probable cause exists that PHILLIP R. CAPE violated 18 U.S.C. §§ 2252A(a)(1)(2) and 2252A(a)(5)(b) receipt and possession of child pornography.

Respectfully submitted,


Special Agent Raymond C. Nichols
Federal Bureau of Investigation

Sworn and subscribed before me
on this 21th day of February 2020.


Hon. Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE